IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ST. PAUL MERCURY INSURANCE COMPANY	:	
	:	**CIVIL ACTION**
	:	**No. 01-5372**
v.	:	
	:	
	:	
STEVEN MITTAN	:	
	:	
	:	

MEMORANDUM

Rufe, J. **December 31, 2002**

The issue presently before this Court is whether Plaintiff St. Paul Mercury Insurance Company (hereinafter "St. Paul") is obligated to pay underinsured motorist benefits ("UIM") to Defendant Steven Mittan (hereinafter "Mittan") who was involved in an accident involving a vehicle covered under a different policy. Upon consideration of the parties' cross-motions for Summary Judgment, and responses thereto, including memoranda of law, St. Paul's Motion for Summary Judgment is granted and defendant Mittan's is denied.

I. Background

The parties have stipulated to the following facts: St. Paul issued an antique automobile policy of insurance to Mittan under policy number 298RK1644 with a policy period running from February 1, 1999 to February 1, 2000. This antique automobile insurance policy covered a 1970 Mercury Cougar XK7 convertible and a 1962 Triumph TR3 roadster and provided underinsured motorist ("UIM") coverage with limits of $60,000. On August 4, 1999, during the policy period, Mittan was operating his motorcycle when he was involved in an accident with a

motor vehicle operated by Peter Gregorio.

The insurer for Peter Gregorio tendered its policy limits of $50,000 to Mittan. Mittan also recovered UIM benefits in the amount of $15,000 from a separate policy covering his motorcycle. Beyond this, Mittan and his wife, who owned two other cars, a Chevrolet S10 and a Pontiac Grand Am, received the UIM policy limits under this policy in the amount of $15,000 as well. Thereafter, Mittan made a claim for UIM benefits under his antique automobile policy with St. Paul.

St. Paul moves this Court for summary judgment and requests a declaration that it is not required to tender the UIM coverage of the antique automobile policy because Mittan was not occupying either the 1970 Mercury Cougar XK7 convertible or the 1962 Triumph TR3 roadster at the time of the accident.

II. Jurisdiction and Legal Standard

St. Paul is a corporation organized and existing under the laws of the State of Minnesota with its principal place of business in St. Paul, Minnesota. Mittan is a citizen and resident of the Commonwealth of Pennsylvania. Jurisdiction is therefore based on diversity pursuant to 28 U.S.C. § 1332(a), and the Declaratory Judgment Act, 28 U.S.C. § 2201. Venue is proper under 28 U.S.C. § 1391(a).

The summary judgment standard does not change when the parties file cross-motions. Southeastern Pa. Transit Auth. v. Pennsylvania Pub. Util. Comm'n, 826 F. Supp. 1506, 1512 (E.D. Pa. 1993). Summary judgment will be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter

of law." Fed. R. Civ. P. 56(c). A fact is material if it might affect the outcome of the case under the governing substantive law. See Anderson v. Liberty Lobby Inc., 477 U.S. 242, 248 (1986). The court determines whether there is a sufficient factual disagreement or whether "it is so one-sided that one party must prevail as a matter of law." Id. at 251-52. "[T]he proper construction of an insurance policy is a matter of law which may be properly resolved by a court pursuant to a motion for summary judgment." Nationwide Mut. Ins. Co. v. Nixon, 682 A.2d 1310, 1313 (Pa. 1996).

III. Analysis

Pennsylvania substantive law applies in this diversity action. See Erie R.R. Co. v. Tompkins, 304 U.S. 64, 78-80 (1938). In determining Pennsylvania law, this Court will look to the Pennsylvania Supreme Court for the leading authority. See State Farm Mut. Automobile Ins. Co. v. Coviello, 233 F.3d 710, 713 (3d Cir. 2000). In the absence of such precedent, this Court will consult Pennsylvania lower state court cases. See id.

1. Reasonable Expectation of Insured

Mittan contends that UIM benefits should flow from the insurance policy issued by St. Paul because he had a reasonable expectation that the antique automobile policy would provide UIM coverage even if he did not occupy the antique automobiles listed on the policy.

In Pennsylvania the proper focus for determining issues of insurance coverage is the reasonable expectation of the insured. Tonovic v. State Farm Mut. Auto Ins. Co., 513 Pa. 445, 521 A.2d 920 (1987). As a general rule, the language of the insurance policy itself will provide the best indication of the content of the parties' reasonable expectations. Bensalem Twp. v. Int'l

Surplus Lines Ins. Co., 38 F.3d 1303, 1309 (3d Cir. 1994). Moreover, "an insured may not complain that his or her reasonable expectations were frustrated by policy limitations which are clear and unambiguous. St. Paul Mercury Ins. Co. v. Corbett, 630 A.2d 28, 30 (1993).

The relevant portions of the antique automobile policy at issue in the instant action are set forth below:

> The UIM endorsement 50914(8/90) to the policy defining "insured" was amended to read as follows:
>
> "'Insured' as used in this endorsement means:
>
> 1. Any person occupying 'your' covered auto.
>
> 2. Any person for damages that person is entitled to recover because of bodily injury to which this coverage applies sustained by a person described in 1. [below]."

Stipulation of Facts at 15; Exhibit E.

> The UIM endorsement PP0419(12/91) to the policy states,
>
> "A. We will pay compensatory damages which an 'insured' is legally entitled to recover from the owner or operator of an 'underinsured motor vehicle' because of 'bodily injury':
>
> 1. Sustained by an 'insured'; and
>
> 2. Caused by an accident."

Stipulation of Facts at 14; Exhibit D.

St. Paul refers to the above definition of "insured" to demonstrate that an insured can only receive UIM coverage under the antique automobile policy if occupying an antique automobile that is covered under the policy. In kind, St. Paul argues that since Mittan was

occupying a motorcycle covered under a different policy, and not occupying the antique automobiles covered under the policy with St. Paul, he is not entitled to UIM benefits.

In Corbett the Pennsylvania Superior Court was presented with a similar issue and found that uninsured motorist ("UM") benefits were not recoverable. 630 A.2d at 29. In that case the insured was driving his employer's automobile when a hit and run driver collided with his car. Id. The insured made claims for UM benefits under several of his automobile policies including a limited antique automobile policy. Id. With regard to the UM benefits under the antique policy, the insurance company filed a petition seeking declaratory relief claiming that the insured was not entitled to UM benefits because the antique policy coverage was limited to injuries that were sustained when the insured occupied the antique automobile only. Id. In that case the policy language at issue was the definition of "covered person." The endorsement to the policy defining "covered person" read as follows:

> "Covered person" as used in this endorsement means:
>
> 1. You or any family member
> 2. Any other person occupying your covered auto.
> 3. Any person for damages that person is entitled to recover because of bodily injury to which this coverage applies sustained by a person described in 1. or 2. above."

Id. at 31.

The Corbett Court found that when the policy was read in its entirety, including the above definition of "covered person," the coverage is limited to "antique automobile activities" only. Id. A portion of the court's rationale follows:

> The very limited use of antique automobiles does not subject them to the normal exposure or danger from uninsured motorists. These vehicles are

> seldom driven on highways for fear of wear and tear or breakdown. In fact, owners of antique automobiles often have their antique cars transported on flatbed trucks. Because of the decreased risks associated with antique vehicles, premiums for these special insurance policies are lower than those of personal automobile policies. To invalidate the restrictions found in the policy would force insurance companies to raise rates on antique automobile policies to account for the attendant increased risks. If coverage is permitted under the circumstances presented here, the distinctions between antique automobile insurance and other types of insurance will be eradicated and premiums for antique vehicle insurance will be on par with personal automobile insurance. This result was not contemplated by the Legislature in enacting the MVFRL . . . . [T]he fact that Pennsylvania provides for special registration plates and fees for antique automobiles and proscribes certain uses of such vehicles also illustrates the Legislature's intent to maintain distinct classifications of automobiles. Different classifications of automobiles have different insurance needs. In this case, the antique policy issued to Corbett was not meant to compensate the insured or a covered person in an accident involving an uninsured motor vehicle unless that uninsured motor vehicle hits the antique car. Based on the foregoing, we do not find that this definition of 'uninsured motor vehicle' in the insurance agreement offends public policy.

Id. at 32-33.

In addition, the court found that Corbett could not have reasonably expected coverage when he was not occupying the antique automobile. Id. at 32. The lower premiums charged for UM coverage under the antique policy, and the fact that the premiums charged were substantially lower than the premiums charged under a regular or personal insurance policy, supports the different nature in coverage between specialty and regular insurance policies. Id. at 32. In this vein, the insurer was required to pay UM benefits only if "the uninsured vehicle hits the antique auto." Id. The distinction between a regular automobile policy and a specialty or limited use policy, such as an antique automobile policy, carries weight here as well.

In the instant case, the policy issued by St. Paul was specifically designed to cover only a limited use antique automobile. Like the insured in Corbett, Mittan paid a dramatically

lower premium for the UIM coverage. Mittan paid St. Paul $4.40 per year for $60,000 in UIM coverage for the 1970 Mercury and $6.60 per year for $60,000 in UIM coverage for the 1962 Triumph, a total of only $117.15. Conversely, Mittan paid $1699 for the insurance coverage on the Chevrolet S10 pick-up truck and Pontiac Grand Am which included only $15,000 in UM/UIM coverage. The difference in premiums paid clearly supports the distinction created between regular use automobile policies and limited or specialty use policies.

Mittan argues that the factual scenario here is different than Corbett and provides reasoning from two other Pennsylvania courts to support the contention that UIM benefits should be paid to him. In Quinney v. American Modern Home Ins. Co., 145 F. Supp.2d 603, 605 (M.D. Pa. 2001), the court held that UIM coverage did indeed exist when an insured sought UIM benefits under the antique policy even though the covered person was a passenger in a vehicle owned and insured by a third party. Id. at 608. The policy, however, defined "insured" as "1. you or any family member; 2. [a]ny other person 'occupying' your covered auto." Id. at 607. The court held that "you or any family member" was a separate clause from "occupying your covered auto," and determined that UIM coverage extended to "you and any family member" irrespective of whether they occupied the covered antique vehicle. Id. at 607-08.

Similarly, the Court in Zurich Ins. Co. v. Lobach, No. CIV.A.97-3281, 1997 WL 535185, at *3-4 (E.D. Pa. Aug. 5, 1997), interpreted the identical policy language that was presented to the court in Quinney and found that the placement of semicolons between paragraphs one and two required the Court to read the two paragraphs separately. Id. The court declined to follow Corbett and found that the punctuation, and specifically the use of semi-colons, required the court to read "you or any family member" as a separate and distinct clause from "occupying

your covered auto." Id. at *4.

The language to be interpreted in the instant policy is different from Quinney and Lobach. The definition of "insured," "[a]ny person occupying 'your' covered auto," omits the first clause "you or any family member" and provides this Court with clear language requiring the insured to be in the covered antique automobile in order to recover UIM benefits. Even Mittan in his Cross-Motion for Summary Judgment recognizes that the facts before this Court are different from Quinney and Lobach. See Defendant's Motion for Summary Judgment at 12. Mittan states that "the instant action would be easily reconcilable . . . had plaintiff not provided another endorsement to its antique policy of insurance which dramatically limits the definition of who is an "insured", under the policy." Id. The simple fact is that St. Paul did provide a clear endorsement limiting the definition of "insured," and this Court simply cannot ignore the facts presented to it based on the wishful thinking of defendant. Mittan may not complain that his reasonable expectations were frustrated by the clear and unambiguous definition of "insured" in his antique automobile policy. See Corbett, 630 A.2d at 30.

Interestingly, in St. Paul Mercury Ins. Co. v. Perry, the Eastern District of Pennsylvania was presented with the exact issue and policy language. No. CIV.A.01-4992, 2002 WL 31300085 (E.D. Pa. Oct. 15, 2002). In Perry, the defendant was driving a vehicle that was insured through a separate insurance policy issued by AAA Mid-Atlantic Insurance Company. Id. The defendants' car was struck by an uninsured motorist, and defendants suffered various injuries as a result of the accident. Id. After recovering UM benefits under their AAA Mid-Atlantic policy, the defendants made a UM claim under their antique automobile policy. Id. The Honorable Michael Baylson, interpreting Pennsylvania law, held that the plaintiff was not

obligated to provide UM benefits to defendants because they were not operating a covered automobile under the antique automobile policy. Id. Judge Baylson found the Pennsylvania's Superior Court's reasoning in Corbett persuasive and held that the "plain and unambiguous language should be given its clear meaning." Perry, 2002 WL 31300085.

Therefore, since Mittan was not occupying either of the two antique autos covered by policy number 298RK1644 at the time of his accident, he is not entitled to recover UIM benefits under the antique automobile policy.

2. Public Policy

Mittan proceeds to argue that excluding UIM benefits is contrary to public policy and the requirements of the Pennsylvania Motor Vehicle Financial Responsibility Law (PMVFRL). See Quinney, 145 F. Supp. 2d at 610 (clear and unambiguous language is valid and enforceable unless it violates public policy). Section 1731(a) of the PMVFRL states that "[n]o motor vehicle liability insurance policy shall be delivered or issued for delivery in this Commonwealth, with respect to any motor vehicle registered or principally garaged in this Commonwealth, unless uninsured motorist and underinsured motorist coverages are offered therein." 75 Pa. C.S.A. § 1731 (a). Nevertheless, UIM coverage can be limited to clear and unambiguous policy limitations. Corbett, 630 A.2d at 30. See also Perry, 2002 WL 31300085 ("Pennsylvania courts have consistently upheld "family use" exclusions as consistent with public policy."); Pempkowski v. State Farm Mut. Auto. Ins. Co., 678 A.2d 398, 402 (Pa. 1996)(explaining that UM/UIM coverage may be restricted by the clear and express terms of the insurance policy). Moreover, the Pennsylvania Insurance Department has indeed approved language that limits UM/UIM protection to only those situations where the insured is injured

while occupying the antique automobile in the specific framework of antique automobile policies. In Scheidly v. St. Paul Mercury Ins. Co., 1999 LEXIS 12463 (E.D. Pa. 1999), aff'd, 215 F.3d 1315 (3d Cir. 2000), an insured under a St. Paul antique automobile policy alleged that the insurance company failed to comply with the PMVFRL when it refused to provide UM benefits unless the insured occupied the covered automobile at the time of the accident. Id. at *3. The Insurance Department's Office of Rate and Policy Regulation "found the endorsement to be 'acceptable' with respect to Antique Motor Coverage." Id at *11. In the end, Mittan's public policy argument must fail and the clear and unambiguous policy language, limiting UIM benefits to when an insured has occupied the covered antique automobile, must be enforced.

IV. Conclusion

For the reasons set forth above, Plaintiff's Motion for Summary Judgment is granted, and Defendant's Motion for Summary Judgment is denied.

An appropriate Order follows.